

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

ABDULRAHMAN CHERRI, et al.,

Plaintiffs,

v.

JAMES B. COMEY, et al.,¹

Defendants.

No. 2:12-cv-11656

District Judge:
AVERN COHN

Magistrate Judge:
LAURIE J. MICHAELSON

Joint Motion for Privacy Act Protective Order

The Plaintiffs and the Official-Capacity Defendants respectfully request that the Court enter the attached Privacy Act Protective Order under 5 U.S.C. § 552a(b)(11) and Federal Rule of Civil Procedure 26(c).

In support of this joint motion, the parties submit:

1. “This case involves a challenge to what plaintiffs say is a policy, custom, and practice of questioning Muslim-Americans as they enter the United States regarding their religious beliefs and practices,” in

¹ Under Federal Rule of Civil Procedure 25(d), James B. Comey, Director of the Federal Bureau of Investigation, automatically substitutes in his official capacity for Robert S. Mueller III, the former director. Likewise, Jeh Johnson, Secretary of the U.S. Department of Homeland Security, automatically substitutes in his official capacity for Janet Napolitano, the former secretary. And Thomas S. Winkowski, Acting Commissioner of U.S. Customs and Border Protection, automatically substitutes in his official capacity for David V. Aguilar, the former acting commissioner.

violation of their right to equal protection under the Fifth Amendment. Memorandum and Order Granting in Part and Denying in Part Official-Capacity Defendants' Motion To Dismiss at 1 (June 11, 2013), ECF No. 44.

2. On October 3, 2013, and November 8, 2013, the Plaintiffs served the Official-Capacity Defendants with requests for the production of documents, including, among other things, "all documents . . . pertaining to Plaintiffs." Plaintiffs' First Request for Production of Documents to Defendant David V. Aguilar, No. 1.

3. The Official-Capacity Defendants have already produced several responsive documents, but they have identified several additional responsive documents that contain personal information about the individual Plaintiffs and about agency personnel that is protected from disclosure by the Privacy Act without a court order. 5 U.S.C.

§ 552a(b)(11). The Official-Capacity Defendants do not object to producing such records to the Plaintiffs if this Court authorizes them to do so, though they do seek to limit the use of personal information about agency personnel to this litigation. Federal Rule of Civil Procedure 26(c) "confers broad discretion on the trial court to decide when a protective

order is appropriate and what degree of protection is required.” *Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 36 (1984).

4. Therefore, in order to provide Plaintiffs with the documents they requested, to satisfy the Official-Capacity Defendants’ obligations under the Privacy Act, and to protect the personal information of agency personnel, the parties jointly request that the Court enter the attached Privacy Act Protective Order.

Dated: February 14, 2014

Respectfully submitted,

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